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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/354,058	07/15/1999	JOHN CRESCENTI	044463.0014	4549

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EXAMINER

COLBERT, ELLA

ART UNIT PAPER NUMBER

3624

DATE MAILED: 09/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/354,058

Applicant(s)

CRESCENTI ET AL.

Examiner

Ella Colbert

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-13, 15-17, and 19-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other:

DETAILED ACTION

1. Claims 1-5, 7-13, 15-17, and 19-30 are pending. Claims 1, 4, 10, and 16 have been amended, claims 6, 14, and 18 have been cancelled, and the Abstract on page 29, lines 9-15 has been deleted in this communication filed 07/01/03 entered as Amendment C, paper no. 18.

2. The IDS filed 03/28/03 has been reviewed and entered as paper no. 13.

Continued Examination Under 37 CFR 1.114

3. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/28/03 has been entered as paper no. 14.

4. The Interview Summary of 05/20/03 has been entered as paper no. 15.

5. Amendment B filed 06/02/03 has been entered as paper no. 16.

6. The Letter Of Non-Compliant Amendment sent 06/05/03 has been entered as paper no. 17.

7. Amendment C filed 07/01/03 has been entered as paper no. 18.

Specification

8. The Specification is objected to because on page 4, line 21, paragraph 3, reads "software agent may communicates the status of the network devices that." This would be better read "software agent may communicate the status of the network devices that"

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and page 10, lines 20 and 21, paragraphs 3 and 4, read "100. Or, interaction with remote manager component 164 could take place when an". It is not clear whether the sentence should read "100 or interaction with the remote manager 164 could take place when an." Clarification is respectfully requested. Correction is required. See MPEP § 608.01(b).

Claim Objections

9. Claims 4 and 7-12 are objected to because of the following informalities: the first manager component and the second manager component is not referenced in the Specification or drawings as the "first manager component" and "second manager component". It is assumed that 154 is a second manager component and 114 is a first manager component. Applicants' drawing fig. 1, fig. 2, and fig. 3 does not show a label for a "first manager component" and a "second manager component." Appropriate correction is required.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-5, 7-13, 15-17, and 19-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over (US 5,005,122) Griffin et al, hereafter Griffin in view of (US 5,276,867) Kenley et al, hereafter Kenley.

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As a preliminary matter, in reference to claim 7, it is suggested to add after “the second manager component is a software module executing on the second network device.”

With respect to claims 1 and 20, Griffin teaches, at least two backup cells each col. 1, lines 41-45 comprising: and each of the plurality of backup cells communicatively coupled to at least one other of the plurality of backup cells, and each of the plurality of backup cells adaptable to be controlled by a management component in another of the plurality of backup cells in col. 2, lines 10-30.

Griffin did not teach, a backup device executing a backup of the data stored on one of the plurality of groups of network devices and a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device.

Kenley discloses, a backup device executing a backup of the data stored on one of the plurality of groups of network devices in col. 2, lines 33-43 and col. 3, lines 40-47 and a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device in col. 5, lines 36-39 and lines 57-63. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a backup device executing a backup of the data stored on one of the plurality of groups of network devices and a management component, communicatively coupled to at least one backup device, controlling the backup of the data to the backup device and to modify in Griffin in view of Griffin's teaching of backup nodes because such a modification would allow Griffin's system to have a backup cell instead of a backup node for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

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With respect to claim 20, Griffin teaches a management component (col. 1, lines 66-68 and col. 2, lines 1-2 –“Software management consists of a number of functions, including verifying that a user has a correct version, installing new versions as they are obtained, and keeping track of software distribution and use for licensing purposes”);

This independent claim is rejected for the similar rationale as given above for claim 1.

With respect to claims 2 and 21, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells in col. 2, lines 51-61. With respect to claim 21, Griffin teaches a first backup node (cell) (col. 4, lines 10-15) and a plurality of backup nodes (cells) (col. 3, lines 21-35).

With respect to claims 3 and 21, Griffin teaches, the backup device is controllable from the management component in another of the plurality of backup cells via the management component in the same backup cell as the backup device in col. 2, lines 51-61. With respect to claim 21, Griffin teaches, the first backup cell (node) (see claims 2 and 21), *supra*.

12. Claims 4-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griffin and Kenley in view of (US 4,995,035) Cole et al, hereafter Cole.

With respect to claims 4 and 22, Griffin teaches, a first backup cell (node) in col. 2, lines 9-30 comprising:

Griffin did not teach, at least one backup device executing a backup of the data stored on the first group of network devices; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device; a second backup cell communicatively coupled to the first backup cell, the second backup cell comprising: a second manager component;

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and the second manager component directly controlling the backup of the data to at least one backup device.

Kenley discloses, at least one backup device executing a backup of the data stored on the first group of network devices in col. 2, lines 33-43 and col. 3, lines 40-47; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device in col. 5, lines 36-39 and lines 57-63. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have at least one backup device executing a backup of the data stored on the first group of network devices; a first manager component, communicatively coupled to at least one backup device, controlling the backup of the data to at least one backup device and to modify in Griffin because such a modification would allow Griffin to have a hierarchical storage system configured to have a secondary storage element that has a greater storage capacity and slower access speed than the primary storage element with the backing store having greater storage space and slower access speed than the secondary storage element.

Kenley did not disclose, a second backup cell communicatively coupled to the first backup cell, the second backup cell comprising: a second manager component and the second manager component directly controlling the backup of the data to at least one backup device.

Cole discloses, a second backup cell communicatively coupled to the first backup cell, the second backup cell in col. 4, lines 10-26 comprising: a second manager component in col. 5, lines 32-46; and the second manager component directly controlling the backup of the data to at least one backup device in col. 4, lines 62-68 and col. 5, lines 47-60. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a second backup cell communicatively

coupled to the first backup cell, the second backup cell comprising: a second manager component and the second manager component directly controlling the backup of the data to at least one backup device and to modify in Griffin and Kenley because such a modification would allow Griffin and Kenley's system to have a second backup cell connected to the first backup cell for backing up data stored on magnetic media for the purpose of minimizing the likelihood of data being lost.

With respect to claim 5, Griffin and Kenley did not teach, the second manager component directly controls the backup of data to at least one backup device. Cole discloses, the second manager component directly controls the backup of data to at least one backup device in col. 10, lines 4-52. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the second manager component directly control the backup of data to at least one backup device and to modify in Griffin and Kenley because such a modification would allow Griffin and Kenley to have the node accept the secondary focal point as its focal point if it does not have a focal point for control of the primary focal point.

With respect to claim 7, Griffin teaches, the network computing system comprising a first network device, where the first manager component is a software module executing on the first device, and the second manager component is a software module in col. 4, lines 62-68 and col. 5, lines 1-4.

With respect to claim 8, Griffin teaches, the network computing system further comprising a second network device, where the second manager component executes on the second network device in col. 6, lines 7-61.

With respect to claim 9, Griffin teaches, the second manager component executes on the first network device in col. 7, lines 13-41.

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With respect to claim 10, this independent claim is rejected for the similar rationale as given above for claims 4 and 5.

With respect to claim 11, this dependent claim is rejected for the similar rationale given for claim 9.

With respect to claim 12, this dependent claim is rejected for the similar rationale given for claims 9 and 11.

With respect to claim 13, this dependent claim is rejected for the similar rationale as given above for claim 8.

With respect to claim 15, this dependent claim is rejected for the similar rationale as is given for claim 4.

With respect to claim 16, this independent claim is rejected for the similar rationale given above for claims 4 and 10.

With respect to claim 17, this dependent claim is rejected for the similar rationale given for claims 4-16.

With respect to claim 19, this dependent claim is rejected for the similar rationale as given above for claims 4, 5, 10, 11, 16, and 17.

With respect to claim 23, this independent claim is rejected for the similar rationale given above for claims 4, 10, and 16.

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With respect to claim 24, Griffin teaches, a means for communicatively coupling each of the plurality of backup cells to at least one other of the plurality of backup cells and each of the plurality of backup cells adaptable to be controlled by a management component in another of the plurality of backup cells (col. 2, lines 10-30, col. 3, lines 36-68, col. 4, lines 1-15 and fig. 1).

With respect to claim 25, this dependent claim is rejected for the similar rationale as for claim 4, *supra*. Griffith teaches a client component (col. 3, lines 21-29).

With respect to claim 26, this dependent claim is rejected for the similar rationale as for claim 24, *supra*.

With respect to claim 26, this dependent claim is rejected for the similar rationale as given for claims 24-26, *supra*.

With respect to claim 27, this independent claim is rejected for the similar rationale as given for claim 20, *supra*.

With respect to claim 28, this dependent claim is rejected for the similar rationale as given for claims 2, 3, and 20, *supra*.

With respect to claim 29, this dependent claim is rejected for the similar rationale as given for claims 5, 12, and 21, *supra*.

With respect to claim 30, this dependent claim is rejected for the similar rationale as given for claims 15 and 22, *supra*.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Ying (US 6,094,416) disclosed a multi-tier, master-slave control network with a master node.

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Inquiries

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ella Colbert whose telephone number is 703-308-7064. The examiner can normally be reached on Monday-Thursday from 6:30 am -5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 703-308-1038. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687 (Official Fax) and (703) 746-5622 (Unofficial Fax).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



E. Colbert

September 21, 2003